

SERVICE DATE - AUGUST 5, 2004

SURFACE TRANSPORTATION BOARD

DECISION

STB Docket No. AB-156 (Sub-No. 23X)

DELAWARE AND HUDSON RAILWAY COMPANY, INC. D/B/A CANADIAN PACIFIC
RAILWAY COMPANY—ABANDONMENT EXEMPTION—IN ALBANY COUNTY, NY

Decided: August 4, 2004

Delaware and Hudson Railway Company, Inc., d/b/a Canadian Pacific Railway Company (D&H), filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon a 9.14 +/- mile portion of railroad known as the Albany Main or the Voorheesville Running Track, between milepost 10.94 +/- and milepost 1.8 +/- in Albany County, NY. Notice of the exemption was served and published in the Federal Register on June 16, 2003 (68 FR 35774-75). The exemption was scheduled to become effective on July 16, 2003.

By decision and notice of interim trail use or abandonment (NITU) served July 8, 2003, the proceeding was reopened, and the exemption was made subject to interim trail use/rail banking and public use conditions, and the conditions that D&H shall: (1) retain its interest in and take no steps to alter the historic integrity of all sites and structures on the right-of-way that are 50 years old or older until completion of the section 106 process of the National Historic Preservation Act, 16 U.S.C. 470f; (2) comply with the requirements of the New York Department of State, Division of Coastal Resources, prior to any salvage activities; and (3) contact the New York State Department of Environmental Conservation, Division of Environmental Permits, Region 4, concerning possible impacts on water quality and any water quality permitting requirements prior to any salvage activities. By decision served November 5, 2003, the section 106 historic preservation condition was removed. The two other imposed conditions remain in effect. A 180-day period (until January 12, 2004) was authorized to permit public use negotiations and to permit the County of Albany, NY (County), to negotiate an interim trail use/rail banking agreement with D&H for the described line.¹ The negotiating period under the NITU was extended by decision served January 2, 2004, which extension expired on July 10, 2004.

On July 22, 2004, the County filed a request to further extend the NITU negotiating period through January 10, 2005. The County states that it has held discussions with representatives of D&H regarding acquisition of the corridor. Additionally, the County states

¹ The public use condition expired on January 12, 2004.

that it has made a request to the New York State Office of Parks, Recreation, and Historic Preservation for funding through the Environmental Protection Fund and Land & Water Conservation Fund to assist in the acquisition. The County adds that Scenic Hudson Land Trust, Inc., working in partnership with it, has commissioned an independent appraisal of the corridor to facilitate formal acquisition negotiations with D&H. The County avers that it needs the requested extension to confirm the status of its grant request for funding assistance and to complete negotiations with D&H. On July 29, 2004, D&H advised the Board that it agrees to the extension request.

Where, as here, the carrier has not consummated the abandonment at the end of the previously imposed negotiating period and has indicated its willingness to continue trail use negotiations, the Board retains jurisdiction and the NITU negotiating period may be extended. Under the circumstances, an extension of the negotiating period is warranted. See Birt v. STB, 90 F.3d 580, 588-90 (D.C. Cir. 1996); Grantwood Village v. Missouri Pac. R.R. Co., 95 F.3d 654, 659 (8th Cir. 1996), cert. denied, 519 U.S. 1149 (1997). Accordingly, the NITU negotiating period will be extended to January 10, 2005.²

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

It is ordered:

1. The request to extend the interim trail use negotiating period is granted.
2. The negotiating period under the NITU is extended until January 10, 2005.
3. This decision is effective on its date of service.

By the Board, David M. Konschnik, Director, Office of Proceedings.

Vernon A. Williams
Secretary

² Although the request slightly exceeds the customary request of 180 days, the Board has granted such requests in the past. See, e.g., Southern Pacific Transportation Company–Abandonment Exemption–In Jackson, Victoria and Wharton Counties, TX, STB Docket No. AB-12 (Sub-No. 162X) (STB served May 29, 1996).